

Chapter 1435. Historic Landmarks and Districts.

§ 1435-01.	DEFINITIONS.....	249
§ 1435-01-A.	ADVERSELY AFFECTED PERSON.....	249
§ 1435-01-A1.	ALTERATION.....	249
§ 1435-01-C.	CERTIFICATE OF APPROPRIATENESS.....	250
§ 1435-01-D.	DEMOLITION.....	250
§ 1435-01-E.	ENVIRONMENTAL CHANGE.....	250
§ 1435-01-H.	HISTORIC DISTRICT.....	250
§ 1435-01-H1.	HISTORIC LANDMARK.....	250
§ 1435-01-H2.	HISTORIC SIGNIFICANCE.....	250
§ 1435-01-H3.	HISTORIC SITE.....	252
§ 1435-01-H4.	HISTORIC STRUCTURE.....	252
§ 1435-03.	DESIGNATION OF HISTORIC LANDMARKS AND DISTRICTS.....	252
§ 1435-05.	PROPOSALS FOR HISTORIC LANDMARKS AND DISTRICTS.....	253
§ 1435-07.	REPORT, PUBLIC HEARING AND DECISION.....	253
§ 1435-09.	NOTIFICATION OF DESIGNATION.....	254
§ 1435-11.	CONSERVATION GUIDELINES.....	254
§ 1435-13.	REGULATION OF ALTERATIONS, DEMOLITIONS AND ENVIRONMENTAL CHANGES.....	254
§ 1435-15.	APPROVAL OF CERTIFICATES OF APPROPRIATENESS.....	256
§ 1435-17.	DECISION REQUIREMENTS.....	256
§ 1435-19.	DUTIES OF THE URBAN CONSERVATOR.....	257
§ 1435-21.	BOARD RECOMMENDATIONS.....	257
§ 1435-23.	DEMOLITION.....	257
§ 1435-25.	MINIMUM MAINTENANCE REQUIREMENT.....	258
§ 1435-27.	EXEMPTIONS.....	258
§ 1435-29.	RELATIONSHIP TO UD OVERLAY DISTRICTS.....	258
§ 1435-31.	RELATIONSHIP TO HS OVERLAY DISTRICTS.....	259
§ 1435-33.	RELATIONSHIP TO PD REGULATIONS.....	259
§ 1435-35.	RELATIONSHIP TO VARIANCES, SPECIAL EXCEPTIONS AND CONDITIONAL USES.....	259
§ 1435-37.	RELATIONSHIP TO DD DISTRICT.....	259
§ 1435-39.	APPEAL.....	260

§ 1435-01. Definitions.

For purposes of this chapter, the following words have the following meanings.

§ 1435-01-A. Adversely Affected Person.

"Adversely Affected Person" means the applicant or any other person, organization, association or city official who had appeared before the Historic Conservation Board personally, by representative or in writing.

§ 1435-01-A1. Alteration.

"Alteration" means a material change in the external architectural features of a historic structure or structure within a Historic Landmark or District, or in the interior of a such structure when and to the extent that its interior features are specifically included in the designation relevant to it.

§ 1435-01-C. Certificate of Appropriateness.

A "Certificate of Appropriateness" means a certificate issued by the Historic Conservation Board or Urban Conservatory [See Section 1435-13-(c)] indicating that a proposed environmental change, alteration or demolition of a historic structure within a Historic Landmark or District is in accordance with provisions of this chapter.

§ 1435-01-D. Demolition.

"Demolition" means the substantial deterioration or complete or substantial removal or destruction of a historic structure or a structure that is located within a Historic Landmark or District.

§ 1435-01-E. Environmental Change.

"Environmental Change" means a material alteration, removal, construction or addition or private or public improvements to a historic structure or within a Historic Landmark or District, if subject to public view, subject to the provisions of this chapter.

§ 1435-01-H. Historic District.

"Historic District" means an area that contains structures that:

- (a) **Historic Significance.** Have historic significance.
- (b) **Representative.** Represent one or more periods or styles of architecture typical of one or more eras in the city's history, or represent an assemblage of structures important to the city's history.
- (c) **Identifiable Area.** Cause such area, by reason of such factors, to constitute an identifiable area.
- (d) **Designated.** Has been designated as a historic district pursuant to this chapter's provisions.

§ 1435-01-H1. Historic Landmark.

"Historic Landmark" means a historic site or structure that has been designated pursuant to this chapter.

§ 1435-01-H2. Historic Significance.

"Historic Significance" means the attributes of a district, site or structure that possess integrity of location, design, setting, materials, workmanship, feeling and association.

- (a) **Eligibility.** A district, site or structure may be considered as having historic significance if it has at least one of the following attributes:
- (1) Association with events that have made a significant contribution to the broad patterns of our history; or
 - (2) Association with the lives of persons significant in our past; or
 - (3) Embodies the distinctive characteristics of a type, period, method of construction or that represent a significant and distinguishable entity whose components may lack individual distinction; or
 - (4) That has yielded, or may be likely to yield, information important in prehistory or history.
- (b) **Ineligibility.** A district, site or structure may not be considered as having historic significance if it is:
- (1) A cemetery, birthplace, grave of a historical figure or a property owned by religious institutions or used for religious purposes, unless it is a religious property deriving primary significance from architectural or artistic distinction or historical importance or
 - (2) A structure that has been moved from its original location, is a reconstructed historic building, is a property primarily commemorative in nature or a property that has achieved significance within the past 50 years, unless the structure or property is an integral part of a district that meets the above criteria or falls within one or more of the following categories:
 - (A) A building or structure removed from its original location but that is significant primarily for architectural value or that is the surviving structure most importantly associated with a historic person or event; or
 - (B) A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with the subject's productive life; or
 - (C) A cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
 - (D) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan and when no other building or structure with the same association has survived; or

- (E) A property primarily commemorative in intent if design, age, tradition or symbolic value has invested it with its own historical significance; or
- (F) A property achieving significance within the past 50 years if it is of exceptional importance or is unique within the city.

§ 1435-01-H3. Historic Site.

"Historic Site" means real property:

- (a) **Historic Structure.** On which a historic structure having historic significance is located; or
- (b) **Historic Significance.** On which there is no structure but that is itself of historic significance and that has been designated as a historic site pursuant to the provisions of this chapter.

§ 1435-01-H4. Historic Structure.

"Historic Structure" means an improvement to real property that has historic significance.

§ 1435-03. Designation of Historic Landmarks and Districts.

Council may, from time to time, designate on the zoning map Historic Landmarks and Districts and shown by the designation "HL" or "HD" appended to the underlying zone designation. A Historic Landmark or District may be designated as an overlay over any other zoning district or combined with any other overlay district.

§ 1435-05. Proposals for Historic Landmarks and Districts.

Consideration of the designation of a Historic Landmark or District may be originated by the Historic Conservation Board or by the filing of a designation application, in such form as the board may prescribe, by Council or a member of Council, by the City Manager, the Urban Conservator, or a local organization, including but not limited to preservation associations and community councils, or owner of property within a proposed Historic Landmark or District. The repeal of or amendment of an adopted designation may be initiated in the same manner as prescribed above for designation. If a Historic Landmark is demolished or destroyed, then Council has the duty to promptly consider the repeal of the designation.

§ 1435-07. Report, Public Hearing and Decision.

The procedure of the consideration of designation applications is as follows:

- (a) **Report.** After receipt of a designation application and on the request of Historic Conservation Board, the Urban Conservator has the duty to prepare and send to the board a report and proposed conservation guidelines for the Historic Landmark or District. The board may then schedule a public hearing on the proposed designation and invite to attend interested owners, community councils, preservation groups, city departments and others. The board has the duty to consider all designation applications initiated by Council.
- (b) **Historic Conservation Board.** After the public hearing, the Board has the duty to decide whether to recommend designation of the proposed historic structure, site, or district and forward its decision, whether favorable or not, with conservation guidelines to the City Planning Commission.
- (c) **City Planning Commission.** The City Planning Commission may consider the following factors:
 - (1) The relationship of the proposed designation to the comprehensive plans of the city and of the community in which the proposed district is located; and
 - (2) The effect of the proposed designation on the surrounding areas and economic development plans of the city; and
 - (3) Such other planning considerations as may be relevant to the designation.

The City Planning Commission may approve or disapprove the designation taking into account the above factors.

- (d) **Council.** Council may vote on the designation. A simple majority of the members elected to Council is required for designation, except if the City Planning Commission disapproves the designation, a two-thirds majority is required.

§ 1435-09. Notification of Designation.

On enactment of a designation, the Clerk of Council has the duty to promptly notify the Historic Conservation Board, the City Planning Commission, the Director of Buildings and Inspections and the City Solicitor. The Solicitor has the duty to cause the designation to be recorded by the Hamilton County Recorder. The Historic Conservation Board has the duty to notify all interested or affected property owners, groups, city departments, boards and commissions.

§ 1435-11. Conservation Guidelines.

At the time of designation, Council has the duty to adopt conservation guidelines for each Historic Landmark or District. The conservation guidelines must promote the conservation, development and use of the Historic Landmark or District and its special historic, architectural, community or aesthetic interest or value. Insofar as practicable, the conservation guidelines must promote redevelopment of historic structures and compatible new development within the Historic District. The guidelines may not limit new construction within a Historic District to a single period or architectural style but may seek to preserve the integrity of existing historic structures. The conservation guidelines must take into account the impact of the designation of a Historic Landmark or District on the residents of the affected area, the effect of the designation on the economic and social characteristics of the affected area, the projected impact of the designation on the budget of the city, as well as the factors listed in paragraph 1435-7(c).

§ 1435-13. Regulation of Alterations, Demolitions and Environmental Changes.

A person may not make an alteration, demolition or environmental change to a historic structure or within a Historic Landmark or District without first obtaining a Certificate of Appropriateness. The procedure for obtaining a Certificate of Appropriateness is as follows:

- (a) **Application.** Applications for Certificates of Appropriateness are filed with the Director of Buildings and Inspections on such form as may be prescribed by the Historic Conservation Board.
- (b) **Historic Conservation Board Determination.** The Board has the duty to make a determination on an application for Certificate of Appropriateness within 30 days of the filing of a completed application, or within 60 days if a public hearing is required pursuant to paragraph (f) of this section, unless the applicant approves an extension of time. If the Board fails to

render its determination within the specified time period, the application for Certificate of Appropriateness is deemed approved. The date of determination may be extended by mutual agreement between the applicant and the Board.

- (c) **Urban Conservator Authority.** The Board may delegate to the Urban Conservator the authority to grant certificates of appropriateness within 15 days without referral to the Board and without a public hearing in the case of minor alterations of types that the Board may previously specify.
- (d) **Notice of Hearing.** For all certificates of appropriateness to be considered by the Historic Conservation Board, the board has the duty to give notice of each application for a Certificate of Appropriateness at least seven days in advance of the board's acting on the application by regular mail to abutting property owners, the community organization in which the property is situated and to any other person who has requested to be notified of applications filed for work proposed to be done on the historic structure or within the particular Historic Landmark or District in which the property affected is located. The Board has the duty to publish a notice of each such application for a Certificate of Appropriateness in the City Bulletin at least once in advance of acting on the application.
- (e) **Notice to Public Agencies.** Unless exempt from a public hearing by paragraph (c), copies of all applications for certificates of appropriateness must, within seven days after filing a completed application, be transmitted to all city departments with authority over any aspect of the activities proposed, to community organizations affected and to any other organization affected having a demonstrated interest in historic conservation. In its transmittal notice, the Board may specify a time, date and place for preliminary prehearing conference, to which all interested city departments, the aforementioned organizations and the applicant may be invited. At such conference, the comments and recommendations of all interested departments concerning their respective authority over the proposed improvements and their advice as to the appropriateness of the proposed improvements may be received and discussed. All interested departments may promptly advise the Board in writing of their respective approval, disapproval or approval with modifications of the proposed improvements. To the extent practicable, a hearing that is to be held by another department or agency concerning a permit decision on a historic structure or structure within a historic district must be scheduled at the same time as the hearing before the Board.
- (f) **Public Hearing Required.** On request of the property owner, or on receipt of objection to the proposed alteration or environmental change from another owner of property within a site or within the same historic district and within 600 feet of the property in question, or community organization, or other organization with a demonstrated interest in historic conservation

or city official, the Board may act on the application for a Certificate of Appropriateness only after a public hearing.

§ 1435-15. Approval of Certificates of Appropriateness.

The Historic Conservation Board has the duty to review and act on all certificates of appropriateness in the manner prescribed herein, for the purpose of furthering the conservation and integrity to the Historic Landmark or District affected. The Board has the duty to approve or approve with conditions the Certificate of Appropriateness when it finds that:

- (a) **Conforms to Guidelines.** The proposal conforms to the guidelines;
- (b) **No Alternatives.** There is no feasible and prudent alternative alteration or environmental change that would conform to the guidelines, and the strict application of the guidelines would:
 - (4) Deny the owner a reasonable rate of return on the real property; and
 - (5) Amount to a taking of the property of the owner without just compensation.
- (c) **Nonprofits.** In case the owner is a nonprofit corporation or organization, there is no feasible and prudent alternative alteration or environmental change that would conform to the guidelines; and the strict application of the guidelines would:
 - (1) Deny the owner the use of the property in a manner compatible with its organizational purposes; and
 - (2) Amount to a taking of the property without just compensation.

Otherwise, the Board has the duty to deny the certificates of appropriateness.

§ 1435-17. Decision Requirements.

The Historic Conservation Board has the duty to make its decisions on applications for certificates of appropriateness in writing and send copies to the Director of Buildings and Inspections and the applicant. The copy to the applicant must be sent by certified mail. In cases where the Board has disapproved certain work, the Board has the duty to state the reasons for its disapproval in writing and transmit the written statement to the applicant, together with any recommendations the Board may have made for changes necessary, before a Certificate of Appropriateness will be favorably considered. Whenever a Certificate of Appropriateness is required pursuant to the provisions of this chapter, the Director of Buildings and Inspections may not issue a building permit until a Certificate of Appropriateness has been granted.

§ 1435-19. Duties of the Urban Conservator.

The Urban Conservator has the duty to facilitate the processing of certificates of appropriateness and may consult with interested city departments concerning aspects of historic conservation that may affect their decisions. All interested city departments may likewise consult with the Urban Conservator.

§ 1435-21. Board Recommendations.

The Historic Conservation Board may work with city departments and assist departments in recommendations to Council on methods of financing public improvements in Historic Districts if those improvements are above normal cost because of historic design.

§ 1435-23. Demolition.

In addition to the provisions of § 1435-13, if an application for a Certificate of Appropriateness seeks approval of demolition, the Historic Conservation Board may delay determination of the application for a period of 180 days on a finding that the structure is of such importance that alternatives to demolition may be feasible and should be actively pursued by both the applicant and the Board. In the event that action on an application is delayed as provided herein, the Board may take such steps as it deems necessary to preserve the structure concerned, in accordance with the purposes of this chapter. Such steps may include but may not be limited to consultation with civic groups, public agencies and interested citizens, recommendations for acquisition of property by public or private bodies or agencies, and exploration of the possibility of moving one or more structures or other features.

§ 1435-25. Minimum Maintenance Requirement.

The owner of a historic structure or a structure within a Historic Landmark or District, if such structure is vacant and uninhabited, has the duty to provide sufficient maintenance and upkeep for such structure to ensure its perpetuation and to prevent its destruction by deterioration.

The provisions of this section are in addition to all other applicable provisions of the Cincinnati Building Code.

The Historic Conservation Board or the Urban Conservator may file a petition with the Director of Buildings and Inspections requesting that the director proceed to take action against an owner who is in violation of this section.

§ 1435-27. Exemptions.

Nothing in this chapter is to be construed to prevent or regulate:

- (a) Ordinary maintenance or repair to a property within a historic site, structure or district if it entails no alteration or environmental change.
- (b) Emergency repairs to public property.
- (c) Demolition, when the Director of Buildings and Inspections or the Fire Chief certifies in writing that such is required by the public safety because of an unsafe or dangerous condition that constitutes an emergency.
- (d) A public improvement if Council has expressly approved it or if other provisions of law compel installation or maintenance of a specified public improvement such as traffic control devices.

§ 1435-29. Relationship to UD Overlay Districts.

Whenever a Historic Landmark or District is located within or overlaps an Urban Design Overlay District, the provisions of this chapter control over any conflicting provisions of Chapter 1437 of the Cincinnati Zoning Code. In any such case the authority of the Zoning Hearing Examiner specified in Chapter 1437 is transferred to the Historic Conservation Board and all references to the examiner therein interpreted as references to the Board. In such cases, the provisions of Chapter 1437, where not inconsistent with the provisions of this chapter, apply to the exercise of the authority prescribed therein.

§ 1435-31. Relationship to HS Overlay Districts.

Whenever a Historic Landmark or District is located within or overlaps a Hillside Overlay District, the provisions of this chapter control over any conflicting provisions of Chapter 1433 of the Cincinnati Zoning Code. In any such case the authority of the Zoning Hearing Examiner specified in Chapter 1433 is transferred to the Historic Conservation Board and all references to the examiner therein interpreted as references to the Board. In such cases, the provisions of Chapter 1433, where not inconsistent with the provisions of this chapter, apply to the exercise of the authority prescribed therein.

§ 1435-33. Relationship to PD Regulations.

Whenever an application is filed for approval of a final development plan in a Planned Development District pursuant to Chapter 1429 of the Cincinnati Zoning Code wholly or partially located within a Historic Landmark or District or involving a historic structure, the Historic Conservation Board shall advise the City Planning Commission.

§ 1435-35. Relationship to Variances, Special Exceptions and Conditional Uses.

Whenever an application is made for a variance, special exception or conditional use relating to property wholly or partially located within a Historic Landmark or District or involving a historic structure, the Historic Conservation Board exercises the authority granted in Chapter 1445 of the Cincinnati Zoning Code to the Zoning Hearing Examiner. In such cases the provisions of Chapter 1445, where not inconsistent with the provisions of this chapter, apply to the exercise of the authority prescribed therein.

The Board may grant such conditional use or special exception or variance from the regulations relating to coverage, setback requirements, parking, building height, fences or landscaping when it finds such relief from the literal implication of the Cincinnati Zoning Code will not be materially detrimental to the public health, safety, and welfare or injurious to property in the district or vicinity where the property is located and either:

- (a) Is necessary and appropriate in the interest of historic conservation so as not to adversely affect the historic architectural or aesthetic integrity of the district.
- (b) Is necessary to provide the owner a recoverable rate of return on the real property where the denial thereof would amount to a taking of the property of the owner without just compensation.

§ 1435-37. Relationship to DD District.

Whenever a Historic Landmark or District is located within or overlaps the Downtown Development District, the provisions of this chapter control over any conflicting provisions of Chapter 1411 of the Cincinnati Zoning Code. In any such case the authority of the Zoning Hearing Examiner or the person or persons responsible for

design review specified in Chapter 1411 is transferred to the Historic Conservation Board and all references to the examiner or the person or persons responsible for design review therein are interpreted as references to the Board. In such cases, the provisions of Chapter 1411, where not inconsistent with the provisions of this chapter, apply to the exercise of the authority prescribed therein.

§ 1435-39. Appeal.

A person who is adversely affected by a decision of the Historic Conservation Board pertaining to a Certificate of Appropriateness may appeal that decision to the Council pursuant to the provisions of Section 111-3, Appeals to Council, of the Municipal Code. A person who is adversely affected by a decision of the Board pertaining to an Urban Design Overlay District, Planned Development, conditional use, variance, special exception or Downtown Development District may appeal that decision to the Zoning Board of Appeals pursuant to Chapter 1449.